IN THE HIGH COURT OF DELHI

R.S.A. No.5/2002

Smt.Harro Devi ..... Appellant
! through: Mr.Rajat Aneja, Advocate.

VERSUS

$ Shri Ram Gopal ..... Respondent
^ through : Mr.Prikshit Rai, Advocate.

RESERVED ON: 19.11.2007

% DATE OF DECISION: 27.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. Appellant was the plaintiff and successfully demolished the defence predicated by the respondent thereby emerging victorious with a decree of ejectment and mesne profits. The judgment and decree by the learned Trial Judge is dated 14.11.1994. Unfortunately, in RCA No.15/2001, vide judgment and decree dated 5.10.2001 she lost the battle. The judgment and decree passed by the learned Trial Judge was set aside. Her suit was dismissed. Aggrieved by the judgment and decree dated 5.10.2001 passed in RCA No.15/01 the appellant has preferred the instant second appeal.

2. H.R.Malhotra, J. framed 2 substantial questions of law as per order dated 10.10.2006. The same reads as under:-

> 'After hearing both the parties, the Court is of the opinion that a substantial question of law arises to the effect “if increase in rent amounts to creating of fresh tenancy”.
>
> Another question of law which arises for consideration is “whether according to Sections 91 and 92 of the Indian Evidence Act, the party can be allowed to lead oral evidence despite having taken the plea of existence of written instrument.
>
> Counsel for the respondent accepts notice. List for final hearing on 20th March, 2007.'

3. At the hearing held on 19.11.2007 there was considerable confusion amongst the counsel pertaining to the question of law framed.

4. I shall highlight the confusion after stating the facts for only then the inappropriateness of the 2 questions of law framed can be appreciated.

5. Appellant, wife of Phool Singh sought ejectment of the respondent and his brother Bajrangi alleging that Bajrangi and the respondent were sons of late Kanta Singh who was inducted as a tenant in one room on the first floor of property No.6258, Kucha Shiv Mandir, Gali Batashan, Khari Baoli at a monthly rent of Rs.13.31 which was subsequently increased to Rs.23/- per month. The tenancy was for a residential purpose. Vide notice dated 18.1.1997 the tenancy was determined. But

due to the operation of the Delhi Rent Control Act 1958 mere determination of the contractual tenancy did not entitle the landlord to evict the tenant. Kanta Singh could not be evicted. That he died on 7.9.1985 leaving behind his sons the defendants as his legal heirs being sons. That the wife of Kanta Singh had predeceased him and his only daughter Bimla was married and was not residing in the suit premises. That under Section 2 of the Delhi Rent Control Act 1958 legal heirs of a deceased statutory tenant succeed to the tenancy for a period of 1 year with effect from date of death of the tenant. That they were not financially dependent upon the tenant. That 1 year was over. That the defendants had no right to continue to occupy the suit premises. That continued possession of the defendants was unauthorized and hence they were liable to be ejected as also liable to pay mesne profits @Rs.60/- per month with effect from 8.9.1985 till date of suit. Future mesne profits till date of possession at the same rate i.e. Rs.60/- per month were also prayed for.

6. In the written statement filed by the defendants it was not denied that their father was a tenant as alleged but it was stated that their father was indicted as a tenant not only in respect of the room in question but another room. It was clarified that possession of one room was surrendered. In other

words tenanted premises as on date when Kanta Prasad died was admitted. It was pleaded that the tenancy was for residential-cum-commercial purpose. It was denied that Kanta Prasad's tenancy was ever determined. It was denied that his status got relegated from a contractual tenant to a statutory tenant. It was alleged that in 1979 parties entered into a fresh agreement whereby rent was increased to Rs.15/- per month. That parties entered into a fresh agreement whereby rent was increased to Rs.18/- per month and finally to Rs.23/- per month in the year 1983. It was alleged that due to fresh tenancies when rent was increased from time to time a fresh lease came into existence post 1979. It was pleaded that in any case pursuant to fresh leases, defendants acquired status of contractual tenants. Thus, it was alleged that the Civil Court had no jurisdiction to eject the defendants.

7. At the trial no written lease was produced. I clarify no written lease deed pertaining to original lease nor to the stated fresh lease was produced. Only evidence led was pertaining to rent receipts, evidencing increased payment of rent.

8. It is in the backdrop of aforesaid facts that the substantial question of law as framed and the confusion arising therefrom needs to be penned down.

9. I wonder as to how Section 91 and 92 of the Indian Evidence Act 1872 stood attracted.

10. It was not a case where terms of a contract or a grant reduced to the form of a document was sought to be contradicted or varied by any person. Indeed, learned counsel for the parties conceded that no question of law arose for consideration pertaining to Section 91 or 92 of the Indian Evidence Act being attracted.

11. To understand as to under what circumstances order dated 10.10.2006 was passed, learned counsel for the appellant explained that since in the written statement filed by the defendants a plea of fresh agreement was raised, proof of the agreement had to be by producing the agreements and not by oral evidence. In other words, learned counsel for the appellant informed the Court that the objection emanates from Chapter V of the Indian Evidence Act which deals with documentary evidence and by virtue of Section 62 of the Indian Evidence Act a document has to be proved by production of the document for the inspection of the Court.

12. Pertaining to the first question framed i.e. 'if increase in rent amounts to creation of fresh tenancy', to say the least even the same is most unhappily worded. As noted herein above, a defence was predicated that from time to time

rent was increased when fresh agreements were arrived at. In proof thereof certain rent receipts were relied upon.

13. No question of law as framed arises as question No.1 for consideration. The question which actually arises is, whether in the facts and circumstances of the case increase in rent creates a fresh tenancy or not.

14. I have dared to refer to the order dated 10.10.2006 and to clarify thereon to emphasize the importance of being focused when question of law are framed for the reason inappropriate and wrongly framed question of law are bound to be responded by inappropriate answers; needless to state inappropriate and irrelevant submissions are made which result in wasting of precious judicial time.

15. The question of law which actually arises for consideration is:-

> "Whether the finding of the learned Trial Judge that the respondent has successfully established a fresh tenancy after earlier tenancy was determined is correct as per evidence on record?

16. Needless to state, an inference pertaining to jural relationship from the admitted evidence is a question of law.

17. Let me peep into the evidence. Ex.PW-2/1 is the lawyer's notice dated 18.1.1973 issued to Kanta Singh stating that he was a tenant of the suit property with effect from 6.6.1962 at a monthly rent of Rs.13.31. That the tenancy

commenced from the 6th day of every calender month and ended on the 5th day of the succeeding month. That the tenancy stood determined.

18. It would be relevant to note at this stage that as per Ex.PW-2/1 the noticee i.e. Kanta Singh was stated to be a tenant under Manmohan Prasad who was stated to have sold the property No.6258 Kucha Shiv Mandir, Gali Batashan, Khari Baoli to the appellant. He was required to attorn to the appellant and simultaneously the tenancy was determined.

19. Since both Courts below have held that Ex.PW-2/1 was duly served upon Kanta Singh, being a question of fact, learned counsel for the parties conceded that in view of Ex.PW-2/1 the contractual tenancy of Kanta Singh stood determined.

20. In view of the applicability of the Delhi Rent Control Act 1958, Kanta Singh became a statutory tenant. There was a clog on the right of the landlord to evict him. The clog was removed and right to seek possession would have sprung on death of the contractual tenant. Thus, the appellant could not seek eviction of Kanta Singh.

21. Learned counsel for the appellant and the respondent were not at variance on this aspect of the legal right of the appellant and the clog thereon.

22. 4 rent receipts Ex.DW-1/1 to Ex.DW-1/4 were proved

at the trial by the defendant. Ex.DW-1/1 pertains to the rent received by the appellant for the month 12.1.1973 to 11.2.1973. She has accepted rent @Rs.11/- per month and Rs.2.31 as house tax i.e. Rs.13.31 per month. Ex.DW-1/2 pertains to the rent received for the period 11.2.1973 till 11.3.1973. The rate is the same as mentioned in Ex.DW-1/1. Ex.DW-1/4 is the rent for the period 12.3.1973 till 11.4.1973. It is the same as per Ex.DW-1/1 and Ex.DW-1/2. Ex.DW-1/3 is the rent received by the appellant for the period 11.6.1973 to 12.7.1973. The rent stands enhanced to Rs.12.50. House tax stands enhanced to Rs.2.50. Total amount received is Rs.15/- per month.

23. Thus, only documentary evidence pertaining to increase in rent is Ex.DW-1/3. But, being important, it is relevant to note that as against tenancy month recorded in Ex.PW-2/1 being the 6th day of each calendar month till 5th day of succeeding month, all receipts record a change in the tenancy month, i.e. from the 12th day of the calendar month ending on the 11th day of the succeeding month.

24. In the decision reported as 1989 SC 467 *N.M.Ponniah Nadar vs. Kamalakshmi Ammal* it was held that mere increase of rent does not evidence a fresh tenancy for the reason original lease may continue but with a variation

pertaining to the rent payable. It was held that a surrender of an existing tenancy does not follow from a mere agreement made during the pendency for the increase or reduction of rent or other variation of its terms, unless there is some special reason to infer a new tenancy, where for instance, the party make the change in the rent in the belief that the old tenancy has come to an end.

25. A similar view was taken by a learned Single Judge of this Court reported as 1993 (25) DRJ 325 *Shri O.Bahree vs. M/s.Rikhi Bros.*

26. Pertaining to a contractual tenant, on contractual tenancy being determined but the landlord rendered helpless in the teeth of protection granted to tenants under rent control legislation, in the decision reported as AIR 1961 SC 1067 *Ganga Dutt Murarka vs. Kartik Chandra Das & Ors.* in para 5 it was observed as under:-

> "5. Under the Calcutta Rent Ordinance, 1946, and the subsequent legislation which culminated in the West Bengal Premises Rent Control Act, 1950, in the expression "tenant" was included any person who continued in possession after termination of his tenancy. Section 12 of the West Bengal Premises Rent Control Act, 1950, expressly protects a tenant whose lease has expired. By the Rent Restriction Statutes at the material time, statutory immunity was granted to the appellant against eviction, and acceptance of the amounts from him which were equivalent to rent after the contractual tenancy had expired or which were fixed as standard rent

> did not amount to acceptance of rent from a lessee within the meaning of Section 116, Transfer of Property Act. Failure to take action which was consequent upon a statutory prohibition imposed upon the courts and not the result of any voluntary conduct on the part of the appellant did not also amount to "otherwise assenting to the lessee continuing in possession." Of course, there is no prohibition against a landlord entering into a fresh contract of tenancy with a tenant whose right of occupation is determined and who remains in occupation by virtue of the statutory immunity. Apart from an express contract, conduct of the parties may undoubtedly justify an inference that after determination of the contractual tenancy, the landlord had entered into a fresh contract with the tenant, but whether the conduct justifies such an inference must always depend upon the facts of each case. Occupation of premises by a tenant whose tenancy is determined is by virtue of the protection granted by the statute and not because of any right arising from the contract which is determined. The statute protects his possession so long as the conditions which justify a lessor in obtaining an order of eviction against him do not exist. Once the prohibition against the exercise of jurisdiction by the court is removed, the right to obtain possession by the lessor under the ordinary law springs into action and the exercise of the lessor's right to evict the tenant will not, unless the statute provides otherwise, be conditioned."

27. In the light of the legal position afore-noted evidence on record needs to be discussed. Indeed, it was not the defence that when rents were increased a written agreement was executed. Plea taken in the written statement is that after Ex.PW-2/1 was served a fresh agreement was entered into between the parties to increase the rent. Neither has it been stated that the agreement was in writing, nor was it pleaded

that the agreement was the oral. Though, during evidence, respondent had stated that a written indenture was drawn up but he failed to bring on record any such written indenture. Thus, it is not a case where the contents of a written document were sought to be proved by oral evidence without producing the document. It is not a case where variation of the terms of a written document by parol evidence was involved.

28. The issue has to be discussed and decided with reference to whether the 4 receipts Ex.DW-1/1 to Ex.DW-1/4 constitute sufficient evidence where from a reasonable inference can be drawn that a fresh tenancy came into existence between the parties.

29. 2 distinct facts emerge from the 4 receipts. The first is that all 4 record that the tenancy month commenced from the 12th day of calendar month and ends on the 11th day of the next calendar month. Further, Ex.DW-1/3 evidences increase in rent.

30. No doubt, as observed in *N.M.Ponniah Nadar's* case (supra) a mere increase or reduction of rent will not necessarily import a surrender of an existing lease and the grant of a new tenancy. Also, if on account of the variation in the quantum of rent any consequential change is made regarding the time and the manner of payment of rent it cannot have the effect of

graver consequences being imported into the change of rent than what the parties had intended and warrant a finding by the Court that the parties had intended to create a new tenancy in supersession of the earlier one or that by operation of law a new tenancy has come into existence.

31. But, what happens when even the month of tenancy is changed?

32. Though in the plaint, tenancy month has not been referred to, but in Ex.PW-2/1 served by the appellant upon the tenant it was specifically mentioned that the tenancy commenced on the 6th day of every calender month and ended on the 5th day of each succeeding month. As noted above, in the 4 receipts DW-1/1 to Ex.DW-1/4 the tenancy month stands changed to and commencing from the 12th day of each calendar month and ends on the 11th day of the next month. Obviously, the tenancy month has been changed.

33. In my opinion the change of the tenancy month cannot be an extension of the previous tenancy for the reason a new tenancy month has come into existence. This change of tenancy month cannot be, but the result of a fresh tenancy.

34. The tenancy month is not only an important term of the tenancy but lies at the very core of the tenancy. Where the tenancy month has changed, a core change in the tenancy

comes into being. This has to be the result of a fresh tenancy.

35. In the instant case the change in tenancy month assumes significance for the reason the earlier tenancy was determined vide Ex.PW-2/1. Contractual tenancy came to an end. The status of the tenant became a statutory tenant. No doubt, the right of the landlord to obtain a decree of ejectment was eclipsed by the Delhi Rent Control Act 1958, but nothing prevented the parties from entering into a fresh tenancy. Post status of the tenant reduced to a statutory tenant only right of the landlord was to receive the contractual rent. But there was no embargo on the landlord and the tenant to enter into a fresh tenancy agreement.

36. The evidence on record has impacted 2 things. The first is the right to receive a higher rent and the other is the change of the tenancy month.

37. The learned Trial Judge failed to note the legal impact of the aforesaid twin evidence. The Appellate Court has dutifully taken note thereof.

38. The view taken by the learned Appellate Court is a possible view and conforms to law.

39. It is settled law that where the learned Trial Judge does not consider the impact of all evidence brought on record it is open to the First Appellate Court to re-appreciate the

evidence and consider the full impact of the evidence brought on record. Further, if the view taken by the Appellate Court conforms to law and even if 2 views are possible, the Second Appellate Court would not substitute its view merely because another view is possible.

40. Even otherwise, I hold that the only legal inference which can be drawn on the facts and circumstances of the instant case in view of the evidence brought on record is that post determination of the earlier tenancy a fresh tenancy came into existence where the month of tenancy was changed and even the rent was increased.

41. Before concluding I may note that the appellant made a vain attempt to urge that the rent was increased when certain repairs were effected in the toilet. But, I note that in the plaint the appellant did not plead said fact. Thus, appellant would be precluded from projecting a case not pleaded.

42. I find no merits in the appeal.

43. The appeal is dismissed.

44. LCR be returned forthwith.

45. No costs.

November 26, 2007 (PRADEEP NANDRAJOG)
dk-bainsla JUDGE